SEP 2 1982 1008-D Y 1.1/8:97-701

97TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 97-701

COMPLETED ORIGINAL

DISAPPROVING CERTAIN REGULATIONS WITH RESPECT TO THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981

AUGUST 5, 1982.—Referred to the House Calendar and ordered to be printed

---

Mr. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

[To accompany H. Con. Res. 388]

The Committee on Education and Labor, to whom was referred the concurrent resolution (H. Con. Res. 388) disapproving certain regulations submitted to the Congress on July 29, 1982, with respect to the Education Consolidation and Improvement Act of 1981, having considered the same, report favorably thereon without amendment and recommend that the concurrent resolution do pass.

SUMMARY OF THE RESOLUTION

House Concurrent Resolution 388 is a resolution of disapproval of the final regulations for Chapter 1 and Chapter 2 of the Education Consolidation and Improvement Act of 1981. These regulations were submitted to Congress by the Secretary of Education and published in the Federal Register on July 29, 1982. House Concurrent Resolution 388 would disapprove these regulations because of their inconsistency with the authorizing legislation.

LEGISLATIVE CONSIDERATION

House Concurrent Resolution 388 was introduced on July 29, 1982, by Chairman Carl D. Perkins, Congressman John N. Erlenborn, and Congressman William F. Goodling. On August 3, 1982, the Committee on Education and Labor ordered it reported by unanimous voice vote.

EXPLANATION AND JUSTIFICATION OF THE LEGISLATION

The Education Consolidation and Improvement Act (ECIA) was enacted as part of the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35. Chapter 1 of ECIA amended the Title I program for dis-

89-008 O

Y1.1/8:97-701

advantaged children under the Elementary and Secondary Education Act, substantially revising many of its requirements. Chapter 2 consolidated 28 categorical elementary and secondary education programs into a block grant to the States.

The proposed regulations for Chapters 1 and 2 were published in the Federal Register on February 12, 1982. In keeping with the Committee's policy, instituted during the past three years, to closely review regulations for programs under its jurisdiction, the Committee very carefully reviewed these proposed regulations and submitted comments on them to the Secretary of Education. On July 29, 1982, the final regulations for Chapters 1 and 2 were published in the Federal Register.

Section 431 of the General Education Provisions Act (GEPA) gives Congress the authority to review all Department of Education regulations and to disapprove any final regulations, within 45 days of publication and transmission, if Congress finds the regulations are inconsistent with the statute from which they derive their authority.

The Committee finds that the Chapters 1 and 2 regulations are inconsistent with and contradictory to their authorizing statute, the Education Consolidation and Improvement Act, and to the General Education Provisions Act.

The basis for this resolution is the Department of Education's contention that the provisions of GEPA do not apply to the Chapter 1 and Chapter 2 programs. The position of the Secretary of Education regarding the non-applicability of GEPA is enunciated in the introduction to the Chapter 1 regulations, which states, "Except for the sections indicated in the preceding paragraphs, it has been determined that the provisions in GEPA do not apply to programs under Chapter 1." The introduction to the Chapter 2 regulations contains a similar statement. The regulations themselves reflect this interpretation of non-applicability, in that they omit references to GEPA provisions which might otherwise have been helpful to mention to program grantees and include provisions which contradict or differ from comparable provisions in GEPA.

The Committee feels that the Department's interpretation flies in the face of the statutory language and Congressional intent.

The Secretary presents four reasons why the Department has concluded that GEPA will not apply to these programs: (1) ECIA contains no language stating that GEPA will apply to its programs. (2) In Section 596 of ECIA, four sections of GEPA are mentioned. The Secretary infers that the mention of these four sections means that all other provisions of GEPA are inapplicable, since their reference would have been unnecessary otherwise. (3) Due to language in Chapter 2 placing increased administrative responsibility within the state educational agencies, the Secretary questions whether he has "the administrative responsibility" for ECIA, as the term is used in Section 400 of GEPA, which defines applicability of GEPA. (4) The Secretary states that, in his opinion, GEPA runs counter to the thrust of ECIA and therefore should not apply.

The Committee rejects these arguments, deeming them totally invalid. The Committee wishes to highlight the following points from the legislative history of the two statutes, which clearly show that GEPA is meant to apply to ECIA.

First, Section 400 of GEPA unequivocably expresses its broad applicability and disposes of the Secretary's contention that the silence of the ECIA with respect to GEPA is relevant:

> (b) Except where otherwise specified, the provisions of this title shall apply to any program for which an administrative head of an education agency has administrative responsibility as provided by law or by delegation of authority pursuant to law. (Sec. 400(b) of GEPA, 20 U.S.C. 1221(b)—emphasis added.)

As the language clearly states, GEPA automatically applies to "any program" that is under the administrative jurisdiction of the Department of Education, "except where" there are specific exemptions or latter statutory provisions which are specifically contradictory are enacted. There is no need to mention GEPA; absence of mention denotes an intent to have it apply. Since ECIA contains no provision exempting Chapters 1 and 2 from the GEPA statute, the Secretary is bound to follow GEPA mandates.

Second, the four GEPA provisions in Section 596 of ECIA are mentioned only to clarify the applicability of these particular sections, not to imply an exemption from all other GEPA provisions. Section 596(a), which refers to Sections 434, 435, and 436 of GEPA, reads in its entirety:

> (a) Sections 434, 435, and 436 of the General Education Provisions Act (relating to "State Educational Agency Monitoring and Agency Application") shall not apply to programs authorized under this subtitle except to the extent that they relate to fiscal control and fund accounting procedures (including the title to property acquired with Federal funds), and shall not be construed to authorize the Secretary to require any reports or take actions not specifically authorized by this subtitle.

It is apparent from the wording ("shall not apply . . . except to the extent) that this provision acts solely to limit the applicability of these three sections and that it has no effect, explicitly or implicitly, upon the applicability of other GEPA sections. Additionally, it is obvious upon its face that the assumption of the authors was that, in the absence of this provision, these sections would apply.

The presence of a reference to Section 412 of GEPA at Section 596(b) of ECIA is likewise insufficient to effect an exemption from the other GEPA provisions. Section 596(b) reads, in its entirety:

> (b) Section 412 of the General Education Provisions Act shall apply to any funds appropriated for any fiscal year pursuant to this subtitle.

Section 412 of GEPA addresses the period of time during which funds appropriated for Federal education programs may remain available for obligation (the so-called "carryover authority"). Section 412 also clarifies the application of the carryover authority in years where there have been changes in statutory provisions; for example, in years when a new set of education amendments is to take effect. Section 412 addresses other fiscal matters, such as the effect of judicial proceedings on the obligation of funds.

The provision in Section 596(b) of ECIA, emphasizing the applicability of section 412 of GEPA, cannot be read in isolation from two other ECIA provisions. Section 514(b) deals with the transition from the categorical Elementary and Secondary Education Act programs to ECIA programs. Section 594 deals specifically with the period of time during which Federal funds appropriated for ECIA would remain available for obligation.

Congress felt these special provisions were needed because of the unusual circumstances surrounding passage of ECIA. Implementation of Chapter 2 involved an unprecedented transition from 28 separate programs to one block grant, the repeal of some 44 education programs, and the creation of new administrative responsibilties at all levels of government. With such large-scale changes envisioned, Congress anticipated the confusion that could ensue in administering the new program. Congress inserted the aforementioned clarifying sections into ECIA to insure that education funds would continue to flow to educational agencies in an orderly fashion, without legal dispute.

As regards Section 412 of GEPA, there was concern that unless Section 412 was specifically referenced within ECIA, the presence of Sections 514(b) and 594 would create confusion and could conceivably lead to a determination to strike Section 412 in its entirety. To clarify that Section 412 was to remain viable and active, it was specifically referenced in Section 596(b) of ECIA.

Third, ECIA contains detailed language delineating the applicability of Title I of the Elementary and Secondary Education Act and other antecedent programs. This approach demonstrates that Congress recognized the need for specificity regarding the applicability of relevant education laws. Where such other provisions are not meant to apply, ECIA says so, such as in Section 554(c). Had Congress not desired GEPA to apply, one can only conclude it would have said so. The absence of such a statement regarding most of the GEPA provisions supports its applicability.

Fourth, GEPA contains many provisions which are important to the proper administration of education programs at the Federal, State, and local levels. It is inconceivable that Congress would have cavalierly dismissed these crucial provisions and jeopardized the smooth functioning of education programs at the local level, without explicit language or comment.

For example, GEPA provides for advance funding of education programs, a key provision sought by many Members of Congress for many years and vital to the stable planning needed for education programs. To presume that Congress would have quietly thrown out this provision for the two largest Federal elementary and secondary education programs, thereby causing harm to local school personnel and schoolchildren, is incredulous.

GEPA encompasses several other provisions that substantially affect the operation of Federal programs at the local and State levels. Among them are provisions to control Federal paperwork, protect the privacy of student records and pupil rights, prohibit Federal control of education, return funds recovered from audits to grantees,

and reserve to Congress the authority to disapprove regulations. Thus, the Committee's resolution of disapproval is grounded not only in a philosophical concern over legislative prerogative, but a practical concern about the impact on local education programs if the mandate that GEPA applies is not followed.

Fifth, the Committee takes issue with the Secretary's questioning of his "administrative responsibility" for ECIA, as it relates to Section 400 of GEPA. Clearly, the language of ECIA assigns all Federal duties to the Secretary and, while there are limits on how his authorities are carried out (as they relate to local control), they are explicit and clear. Frankly, to accept the Secretary's reasoning would create the highly impractical and anomalous case of a Federal program which distributes funds and promulgates regulations, but is administered by no one.

Finally, there is the matter of the "thrust" of ECIA, as noted by the Secretary. Whether the Secretary agrees with the wisdom of the application of GEPA to ECIA programs is not the issue. The issue is what is the law? The most important rule in construing statutes is to give effect to all legislative provisions, unless they are internally and explicitly contradictory. ECIA and GEPA will function together, in harmony, and must be applied in this fashion. This is the only proper construction of both.

Therefore, having examined the Department's contentions in conjunction with the statute and legislative history, the Committee must conclude that the Department's position, and its regulations issued pursuant to that position are clearly inconsistent with ECIA, from which they derive their authority.

The Committee does not recommend this action without attempting, in a responsible fashion consistent with its procedures for reviewing regulations, to inform the Secretary of our concerns. By letter of April 13, 1982, relating to the proposed regulations published on February 12, 1982 at 47 FR 6584, the Chairman voiced his concern about the purported non-applicability of GEPA. During a public hearing on October 6, 1981, Congressman John Ashbrook, the primary sponsor of ECIA, expressed his view that GEPA clearly applied to ECIA. The Committee is also aware that in commenting on these same proposed regulations on July 15, 1982, the Chairman of the Senate Labor and Human Resources Committee, Senator Hatch, clearly told the Department that GEPA applied.

Unfortunately, the Department has chosen to continue on its original course, which brings it into direct conflict with the law. The Committee cannot condone this disregard of the statute and therefore disapproves these regulations.

PROVISIONS OF THE RESOLUTION

House Concurrent Resolution 388 disapproves the final regulations submitted to Congress on July 29, 1982 for Chapter 1 and Chapter 2 of the Education Consolidation and Improvement Act. This resolution disapproves these regulations on the grounds of their inconsistency with the authorizing statute and would return the regulations to the Secretary of Education to be modified or otherwise disposed of.

OVERSIGHT

No funding or recommendations concerning oversight of the regulations affected by this resolution have been received by the Committee from the Committtee on Government Operations. However, the Committee's action in reviewing and disapproving these regulations represents prudent oversight of a program within its jurisdiction.

COST ESTIMATE

House Concurrent Resolution 338 has no effect on any authorizations or appropriations for any program. Therefore, there will be no additional costs to the Federal Government incurred as a result of passage of this resolution.

INFLATIONARY IMPACT

Since this resolution does not involve any additional costs, the Committee concludes that it has no inflationary impact.

SECTION-BY-SECTION ANALYSIS

The resolution contains only one section which would disapprove the Education Consolidtion and Improvemnt Act regulations.

CHANGES IN EXISTING LAW

House Concurrent Resolution 388 makes no changes in existing law.

○